
UTAH LABOR COMMISSION

AHMAD AKRAMI,

Petitioner,

vs.

**HUISH DETERGENTS and
WORKERS COMPENSATION FUND,**

Respondents,

**ORDER ON MOTION
FOR REVIEW**

Case No. 05-0371

Ahmad Akrami asks the Utah Labor Commission to review Administrative Law Judge Holley's decision regarding Mr. Akrami's claim for benefits under the Utah Occupational Disease Act ("the Act"; Title 34A, Chapter 3, Utah Code Annotated).

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63-46b-12, § 34A-3-102, and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

On April 19, 2005, Mr. Akrami filed an application for hearing with the Labor Commission. In this application, Mr. Akrami sought present and future medical expenses from Huish Detergents and its insurance carrier, the Workers Compensation Fund, (referred to collectively as "Huish") for Mr. Akrami's work-related asthma.¹ Judge Holley scheduled an evidentiary hearing on Mr. Akrami's claim for August 24, 2006.

Late in the afternoon of August 23, 2006, Mr. Akrami faxed a "revised" pretrial disclosure to Judge Holley. This document purported to limit Mr. Akrami's claim for medical expense to the period of January 2003 through January 2004, thereby in effect withdrawing Mr. Akrami's claim for medical expenses after January 2004.

The next day, at the beginning of the evidentiary hearing, the parties informed Judge Holley they had settled Mr. Akrami's claim for medical expenses for the period between January 2003 through January 2004. Mr. Akrami then stated his position that because 1) the parties had settled their dispute over medical expenses through January 2004, and 2) he had withdrawn his claim for post-January 2004 medical expenses, nothing remained in dispute between the parties and there was

¹ Huish had previously accepted liability under the Utah Occupational Disease Act for Mr. Akrami's asthma and had paid disability compensation for that condition. The only issue now before the Commission is Mr. Akrami's right to payment of medical expenses.

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no need for the evidentiary hearing. Mr. Akrami further advised Judge Holley that he had not yet decided whether he would pursue a claim for post-January 2004 medical expenses. Mr. Akrami asserted he was entitled to pursue such a claim at some time in the future if he chose to do so.

For its part, Huish objected to Mr. Akrami's purported withdrawal of his claim for post-January 2004 medical expenses and argued that the hearing should proceed on that issue.

Judge Holley received the parties' arguments and then issued her order on September 15, 2006. In that order, Judge Holley did not explicitly answer the question presented by the parties, which was whether Mr. Akrami could unilaterally withdraw his claim for post-January 2004 medical benefits and preserve the claim for adjudication at some future date. Instead, the order dealt with the merits of Mr. Akrami's entitlement to post-January 2004 medical benefits. On that issue, Judge Holley found that Mr. Akrami "acknowledged that the [post-January 2004] treatment is not medically related to the subject occupational disease." Judge Holley also found that Mr. Akrami was not entitled to payment of post-January 2004 medical expenses "because no outstanding medical bills exist."

In his motion for Commission review of Judge Holley's decision, Mr. Akrami complains that Judge Holley failed to address the issue presented to her and made factual findings not supported by the record.

DISCUSSION

Mr. Akrami is correct in his assertion that Judge Holley's decision does not discuss the issue raised by the parties at the hearing on August 25, 2006. The Commission therefore addresses that issue in this decision. While the parties characterize the issue in different ways, the Commission believes it is properly stated as follows: Was Mr. Akrami entitled to unilaterally withdraw part of his claim for medical benefits and retain the right to bring a claim for such medical benefits at some future date.

The Labor Commission and the Labor Commission Appeals Board have addressed a similar issue in the past. See Willard v. Thurston Cable Construction and Fremont Comp., Commission Case No. 98-0569, July 29, 2002, and Duran v. Shoney's Restaurant and Wausau Insurance Co., Commission Case No. 04-0077, issued November 30, 2006, and affirmed by the Utah Court of Appeals in *Duran v. Labor Commission, et al.*, 182 P.3d 931 (Utah App. 2008). In these cases, the Commission and Board concluded that, after an answer has been filed in response to an injured worker's application for hearing, the injured worker must obtain Commission approval to withdraw the application, based upon a showing of good cause. While these cases deal with attempts to withdraw applications for hearing rather than specific claims, the Commission believes the same principles apply. The Commission therefore concludes that Judge Holley's permission was required before Mr. Akrami could withdraw his claim for post-January 2004 medical benefits.

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Because Judge Holley did not address whether good cause existed to allow Mr. Akrami to withdraw his claim, the Commission has review of the record and considered the parties' arguments on that point. The Commission finds nothing justifying withdrawal of the claim. By the date set for the evidentiary hearing, Mr. Akrami had undergone the medical care in question. It would have been possible for him to obtain medical opinions regarding the necessity of such care to treat his work-related asthma. However, Mr. Akrami concedes in his motion for review that "no doctor had opined, **or had been asked to opine** whether any medical treatment after January 2004 through the date of the hearing was causally related to [Mr. Akrami's] occupational disease." (Emphasis added.)

The Commission's Rule R602-2(I)(7) provides that "[p]arties are expected to be prepared to present their evidence on the date the hearing is scheduled," and "[r]equests for continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance." The Commission does not view Mr. Akrami's unexplained failure to obtain necessary proof as a sufficient reason to permit him to withdraw his claim in this case.

Having concluded that Mr. Akrami was not entitled to withdraw his claim for post-January 2004 medical expenses, the Commission will address Mr. Akrami's objections to Judge Holley's decision on the merits of that claim.

Judge Holley's decision found that Mr. Akrami had "acknowledged" his post-January 2004 medical treatment "is not medically related to the subject occupational disease." Mr. Akrami correctly points out that he did not make any such admission. Judge Holley also stated in her decision that "no outstanding medical bills exist" for the subject period. This statement is also unsupported by the record. Because the foregoing statements of fact are incorrect, they do not serve as a basis for denial of Mr. Akrami's claim for medical benefits. However, the Commission has noted Mr. Akrami's affirmative representation in this proceeding that "no doctor had opined, or had been asked to opine whether any medical treatment after January 2004 through the date of the hearing was causally related to [Mr. Akrami's] occupational disease." This representation establishes that Mr. Akrami could not meet his burden of proving that his post-January 2004 medical care was necessary to treat his work-related disease. Consequently, Mr. Akrami's claim for post-January 2004 medical care is properly denied for that reason.

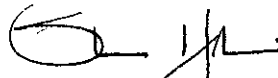
In summary, the Commission concludes that Mr. Akrami was not entitled to withdraw his claim for post-January 2004 medical benefits and failed to satisfy his burden of proving that such medical care was necessary to treat his work-related asthma.

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ORDER

For the reasons stated in this decision, the Commission denies Mr. Akrami's claim for medical benefits under the Utah Occupational Disease Act for the period beginning February 1, 2004, through August 24, 2006. It is so ordered.

Dated this 28th day of January, 2010.



Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.